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In re Application of
Kenji Ishibashi, et al.
Application No. 08/988,537
Filed: December 10, 1997
For: **IMAGE OBSERVATION APPARATUS**

MAILED Paper No. 39

DEC 03 2004

**DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600
DECISION ON PETITION
TO WITHDRAW HOLDING OF
ABANDONMENT**

This is in response to the Petition to Withdraw the Holding of Abandonment filed August 31, 2004, which is treated as pursuant to 37 CFR §1.181. No fee is required.

The application is held as abandoned for failure to timely pay the issue fee in response to the Notice of Allowance and Issue Fee Due mailed March 12, 2004. A Notice of Abandonment has not yet been mailed.

Petitioner states that they have not received any communication from the Office subsequent to the Decision on Appeal mailed January 13, 2004.

In the absence of any irregularity in the mailing of an Office action, there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

Petitioner has complied with the requirements set forth above. However, a review of the record indicates that the Notice of Allowance was returned to the Office. The correspondence address on the Notice of Allowance mailed on March 1, 2004 matches the address in the subject petition. Thus, there was obviously an irregularity in mailing of the Notice of Allowance and Issue Fee Due.


Decision on Petition

Accordingly, the application was not abandoned in fact, and the holding of abandonment is withdrawn. The Notice of Allowance originally mailed March 12, 2004 is vacated.

The petition is **GRANTED**.

Since it has been established that the Notice of Allowance was not received, it is presumed that the Notice of Allowability was also not received.

The application file is being forwarded to the Technology Center's technical support staff for preparing a new Notice of Allowance and Issue Fee Due. The new Notice of Allowance and Issue Fee Due as well as Notice of Allowability will be re-mailed setting a new three month statutory period for payment of the issue fee.



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